

SUNSHINE REFORM TASK FORCE

DRAFT MEETING MINUTES

Thursday, April 3, 2008
6:00pm – 8:30pm

City Hall, Wing Rooms 118-119-120

Present: Ed Rast, Strong Neighborhoods Initiative PAC; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Bert Robinson, San José Mercury News; Edward Davis, Orrick Law Firm (Legal Counsel); Virginia Holtz, Willow Glen Neighborhood Assoc.; Bob Brownstein, South Bay Labor Council; Bobbie Fischler, League of Women Voters; Dave Zenker, Falls Creek Neighborhood Assoc.

Absent: Brenda Otey, At Large-Representative; Nanci Williams, San José/Silicon Valley Chamber of Commerce; Dan Pulcrano, Silicon Valley Leadership Group; Trixie Johnson, Former Councilmember; Ken Podgorsek, United Neighborhoods of SCC; Mary Ann Ruiz, Parks and Recreation Commission

Staff: Lee Price, City Clerk; Lisa Herrick, Senior Deputy City Attorney; Tom Manheim, Office of the City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency. Eileen Beaudry, Office of the City Manager; Dottie Disher, City Clerk; Tom Norris, Office of the City Manager; Troy Gavin, Office of the City Manager

I. Comments from the Chair

Chair Rast noted that the Rules Committee had reviewed the remaining Phase I/Part II recommendations at the April 1st Study Session. Staff member Tom Manheim noted that the final Rules recommendations would proceed to the City Council and that the Task Force would be notified of the Council meeting date and provided with the staff report.

Chair Rast reviewed a draft statement of Purpose and Intent proposed as an introduction to the Open Government Ordinance. He also read Brenda Otey's suggested additional language: "This ordinance is intended to be readable and understandable by the public without having to have an attorney interpret the ordinance." Lisa Herrick noted that the language in section (f) could be made clearer and Bob Brownstein suggested the following language for section (f): "Wherever exemptions to the Open Government Requirements are specified, those exemptions should be narrowly construed."

Bert Robinson moved and Bob Brownstein seconded approval of the Statement of Purpose and Intent with the two amendments above.

Public Comment: James Chadwick suggested two amendments: 1) "Inconsistencies between the Sunshine Ordinance and State Law should be resolved in favor of greater access;" and 2) "This statement of intent is intended to be considered and applied by the Open Government Officer and the Open Government Commission in making decisions about the application of the Sunshine Ordinance.

Sunshine Reform Task Force

Meeting Minutes

April 3, 2008

Page 2

The original motion was modified to include the suggestions from Mr. Chadwick and passed unanimously and staff was directed to revise the language accordingly.

II. Comments from City Staff

Staff introduced two additional items not included in the original meeting packet: a memo from James Chadwick dated April 1, 2008 concerning police reports and the February 7th Task Force Meeting Minutes. Staff added that the meeting minutes had been posted on the Sunshine website since mid-February and requested the Task Force to consider their approval. Virginia Holtz moved and Joan Rivas-Cosby seconded acceptance of the minutes in the packet, and their approval. Motion passed unanimously with one abstention (Zenker).

III. Public Records Subcommittee Recommendations

A. Code Enforcement

Bert Robinson reviewed the draft language for Code Enforcement information that is public and subject to disclosure. Public Comment: James Chadwick commented on the term “investigative techniques” in paragraph “C” and asked if the terminology were necessary as it is not a term of art. Lisa Herrick agreed that the language should be made consistent with the language in the Police Records section.

Bob Brownstein moved and Virginia Holtz seconded approval of the Code Enforcement language with the change described above. Motion passed unanimously.

B. Balancing Test

Bert Robinson identified new language in paragraph 2 of section B in the draft language on the Balancing Test: “*provides information that could lead to an investigation.*” He noted that the language responded to the City’s concern about maintaining anonymity for those employees responding to the Employee Fraud and Abuse Hotline.

Virginia Holtz moved and Joan Rivas-Cosby seconded approval of the Balancing Test language with the change described above. Motion passed unanimously.

C. Law Enforcement Records – Police Reports

Bert Robinson identified two changes to the language for Police Reports: the addition of a broad privacy exemption and language to prevent the ordinance from being used to assemble criminal history information, which is protected under State law.

Virginia Holtz moved and Dave Zenker seconded approval of the Police Report language.

Sunshine Reform Task Force

Meeting Minutes

April 3, 2008

Page 3

Public Comment: James Chadwick, on behalf of the San Jose Mercury News, stated that in general there is a statewide history of non-compliance with the California Public Records Act underscoring the need for the proposed language. Skyler Porras of the American Civil Liberties Union supported the ordinance language. Betsy Wolf, a San Jose resident, expressed concern over the ability to follow the behavior of one particular police officer, given the redactions allowed. Ed Davis clarified that the redactions allowed do not include the names of on-duty police officers. Raj Jadey of Silicon Valley De-Bug magazine inquired about reports of taser usage on a specific person, and Lisa Herrick of the City Attorney's Office clarified that a general report on taser usage could be obtained. Rick Callender of the San Jose Silicon Valley National Association for the Advancement of Colored People spoke in support of the draft language but expressed concern that it might impair the community's ability to get reports regarding a specific geographic area of the City. Marianne Messina, member of the public, commented that a 60 day timeframe was too short for those attempting to determine if a particular person was being targeted by the police and suggested grandfathering in those information requests already in progress in the Police Department. JoAnne McCracken from the District Attorney's Office, stated that the language added to protect privacy is inadequate and gave several examples.

The Task Force discussion focused on whether the privacy exemptions were too broad or too narrow.

A new paragraph B6 was suggested by Lisa Herrick to address Task Force concerns: "Identifying information of any person who has been accused of a crime if that person has not been arrested or charged in connection with that claim, unless the information furthers the investigation or protects public safety." The existing paragraph B6 would become a new paragraph B7.

The persons who made and seconded the motion accepted the recommended new language. The original motion, with the addition of the new language, passed unanimously.

IV. Nest Meeting & Work Plan

Tom Manheim noted that staff will return to the Task Force when the final Task Force report on Phase II is ready and suggested the potential date of June 5th. He added that staff would bring back the cost for data extraction at that time.

V. Open Forum

James Chadwick asked the City Attorney's Office a question about potential conflict between the CA Penal Code and proposed Open Government Ordinance.

VI. The Chair adjourned the Task Force meeting at 7:54 p.m.